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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 VHT, INC.,

CASE NO. C15-1096JLR

11 Plaintiff,

PRELIMINARY JURY
INSTRUCTIONS

12 v.

13 ZILLOW GROUP, INC., et al.,

14 Defendants.

15 Dated this 24th day of January, 2017.


16 JAMES L. ROBART
17 United States District Judge

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JURY INSTRUCTION NO. 1

2 Members of the jury: You are now the jury in this case. It is my duty to instruct
3 you on the law.

4 It is your duty to find the facts from all the evidence in the case. To those facts
5 you will apply the law as I give it to you. You must follow the law as I give it to you
6 whether you agree with it or not. And you must not be influenced by any personal likes
7 or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case
8 solely on the evidence before you. You will recall that you took an oath to do so.

9 Do not decide the case based on “implicit biases.” Everyone, including me, has
10 feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that
11 we may not be aware of. These hidden thoughts can impact what we see and hear, how
12 we remember what we see and hear, and how we make important decisions. Because you
13 are making very important decisions in this case, I strongly encourage you to evaluate the
14 evidence carefully and to resist jumping to conclusions based on personal likes or
15 dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The
16 law demands that you return a just verdict based solely on the evidence, your individual
17 evaluation of that evidence, your reason and common sense, and these instructions. Our
18 system of justice is counting on you to render a fair decision based on the evidence, not
19 on biases.

At the end of the trial I will give you final instructions. It is the final instructions that will govern your duties.

1 Please do not read into these instructions, or anything I may say or do, that I have
2 an opinion regarding the evidence or what your verdict should be.
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JURY INSTRUCTION NO. 2

2 To help you follow the evidence, I will give you a brief summary of the positions
3 of the parties. You are not to take this instruction as proof of the matters claimed. It is
4 for you to decide, based on the evidence presented, whether a claim has been proved.

5 This is a civil lawsuit brought by Plaintiff VHT, Inc., against Defendants Zillow
6 Group, Inc., and Zillow, Inc. Often, the court and the parties will refer to the Defendants,
7 Zillow Group, Inc., and Zillow, Inc., collectively as “Zillow.” VHT commissions
8 photographs of real estate, and Zillow owns and operates several real estate-oriented web
9 platforms. Zillow’s web platform that is most relevant to this case is called “Digs.”

10 VHT asserts that Zillow, through “Digs,” infringed VHT’s copyrights in 28,203
11 photographs. I will refer to those photographs collectively as “the VHT Photos.” More
12 specifically, VHT alleges that Zillow committed three types of copyright infringement:
13 (1) direct copyright infringement, (2) contributory copyright infringement, and (3)
14 vicarious copyright infringement. I will explain the legal differences between those types
15 of copyright infringement at the close of trial. VHT has the burden of proving its claims.

16 Zillow does not deny that the VHT Photos appear on Digs, but Zillow denies that
17 it is liable for any type of copyright infringement. In addition, Zillow asserts two
18 affirmative defenses: (1) that it possesses a license from VHT to use all of the VHT
19 Photos on Digs, and (2) that any copying of the VHT Photos in connection with Digs was
20 fair use. Zillow has the burden of proving its affirmative defenses.

21 VHT denies Zillow's affirmative defenses.

JURY INSTRUCTION NO. 3

2 When a party has the burden of proving any claim or affirmative defense by a
3 preponderance of the evidence, it means you must be persuaded by the evidence that the
4 claim or affirmative defense is more probably true than not true. This is the burden of
5 proof for all claims and affirmative defenses in this case.

6 You should base your decision on all of the evidence, regardless of which party
7 presented it.

JURY INSTRUCTION NO. 4

2 All parties are equal before the law, and a corporation is entitled to the same fair
3 and conscientious consideration by you as any party.

JURY INSTRUCTION NO. 5

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits that are admitted into evidence;
3. any facts to which the lawyers have agreed; and
4. any facts that I may instruct you to accept as proved.

JURY INSTRUCTION NO. 6

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they may say in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you are instructed to disregard, is not evidence and must not be considered. In addition, some evidence may be received only for a limited purpose; when I instruct you to consider certain evidence only for a limited purpose, you must do so and you may not consider that evidence for any other purpose.

(4) Anything you may see or hear when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO. 7

2 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact,
3 such as testimony by a witness about what that witness personally saw or heard or did.
4 Circumstantial evidence is proof of one or more facts from which you could find another
5 fact. You should consider both kinds of evidence. The law makes no distinction between
6 the weight to be given to either direct or circumstantial evidence. It is for you to decide
7 how much weight to give to any evidence.

8 By way of example, if you wake up in the morning and see that the sidewalk is
9 wet, you may find from that fact that it rained during the night. However, other evidence,
10 such as a turned on garden hose, may provide a different explanation for the presence of
11 water on the sidewalk. Therefore, before you decide that a fact has been proved by
12 circumstantial evidence, you must consider all the evidence in the light of reason,
13 experience, and common sense.

JURY INSTRUCTION NO. 8

2 There are rules of evidence that control what can be received into evidence. When
3 a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side
4 thinks that it is not permitted by the rules of evidence, that lawyer may object. If I
5 overrule the objection, the question may be answered or the exhibit received. If I sustain
6 the objection, the question cannot be answered, and the exhibit cannot be received.
7 Whenever I sustain an objection to a question, you must ignore the question and must not
8 guess what the answer might have been.

9 Sometimes I may order that evidence be stricken from the record and that you
10 disregard or ignore that evidence. That means when you are deciding the case, you must
11 not consider the stricken evidence for any purpose.

JURY INSTRUCTION NO. 9

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

(1) the opportunity and ability of the witness to see or hear or know the things testified to;

(2) the witness's memory;

(3) the witness's manner while testifying;

(4) the witness's interest in the outcome of the case, if any;

(5) the witness's bias or prejudice, if any;

(6) whether other evidence contradicted the witness's testimony;

(7) the reasonableness of the witness's testimony in light of all the evidence; and

(8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the

1 other hand, if you think the witness testified untruthfully about some things but told the
2 truth about others, you may accept the part you think is true and ignore the rest.

3 The weight of the evidence as to a fact does not necessarily depend on the number
4 of witnesses who testify. What is important is how believable the witnesses were, and
5 how much weight you think their testimony deserves.

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JURY INSTRUCTION NO. 10

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone

else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case, and how long you expect the trial to last. But, if you are asked or approached

1 in any way about your jury service or anything about this case, you must
2 respond that you have been ordered not to discuss the matter and report the
3 contact to the court.

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5 Because you will receive all the evidence and legal instruction you
6 properly may consider to return a verdict: do not read, watch, or listen to any
7 news or media accounts or commentary about the case or anything to do with
8 it; do not do any research, such as consulting dictionaries, searching the
9 Internet, or using other reference materials; and do not make any
10 investigation or in any other way try to learn about the case on your own. Do
11 not visit or view any place discussed in this case, and do not use Internet
12 programs or other devices to search for or view any place discussed during
13 the trial. Also, do not do any research about this case, the law, or the people
14 or companies involved—including the parties, the witnesses, or the
15 lawyers—until you have been excused as jurors. If you happen to read or
16 hear anything touching on this case in the media, turn away and report it to
17 me as soon as possible.

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19 These rules protect each party's right to have this case decided only on evidence
20 that has been presented here in court. Witnesses here in court take an oath to tell the
21 truth, and the accuracy of their testimony is tested through the trial process. If you do
22 any research or investigation outside the courtroom, or gain any information through

1 improper communications, then your verdict may be influenced by inaccurate,
2 incomplete, or misleading information that has not been tested by the trial process. Each
3 of the parties is entitled to a fair trial by an impartial jury, and if you decide the case
4 based on information not presented in court, you will have denied the parties a fair trial.
5 Remember, you have taken an oath to follow the rules, and it is very important that you
6 follow these rules.

7 A juror who violates these restrictions jeopardizes the fairness of these
8 proceedings, and a mistrial could result that would require the entire trial process to start
9 over. If any juror is exposed to any outside information, please notify the court
10 immediately.

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JURY INSTRUCTION NO. 11

I urge you to pay close attention to the trial testimony as it is given. During deliberations you will not have a transcript of the trial testimony.

4 If at any time you cannot hear or see the testimony, evidence, questions, or
5 arguments, let me know so that I can correct the problem.

JURY INSTRUCTION NO. 12

2 If you wish, you may take notes to help you remember the evidence. If you do
3 take notes, please keep them to yourself until you go to the jury room to decide the case.
4 Do not let notetaking distract you. When you leave, your notes should be left in the jury
5 room. No one will read your notes.

6 Whether or not you take notes, you should rely on your own memory of the
7 evidence. Notes are only to assist your memory. You should not be overly influenced by
8 your notes or those of other jurors.

JURY INSTRUCTION NO. 13

2 Those exhibits received in evidence that are capable of being displayed
3 electronically will be provided to you in that form, and you will be able to view them in
4 the jury room. A computer, a large monitor, and accessory equipment will be available to
5 you in the jury room.

JURY INSTRUCTION NO. 14

2 From time to time during the trial, it may become necessary for me to talk with the
3 attorneys out of the hearing of the jury, either by having a conference when the jury is
4 present in the courtroom, or by calling a recess. Please understand that while you are
5 waiting, we are working. The purpose of these conferences is not to keep relevant
6 information from you, but to decide how certain evidence is to be treated under the rules
7 of evidence and to avoid confusion and error.

8 Of course, we will do what we can to keep the number and length of these
9 conferences to a minimum. I may not always grant an attorney's request for a
10 conference. Do not consider my granting or denying a request for a conference as any
11 indication of my opinion of the case or of what your verdict should be.

JURY INSTRUCTION NO. 15

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.